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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,295	08/02/2001	Michael Kreindel	KREINDEL=2	3901

1444 7590 02/25/2004

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EXAMINER

FARAH, AHMED M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 02/25/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,295

Applicant(s)

KREINDEL, MICHAEL

Examiner

Ahmed M Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-11 and 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9 and 11-20 is/are rejected.
- 7) ☒ Claim(s) 21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-9, 11, and 13-20 are rejected under 35

U.S.C. 102(b) as being anticipated by Shaddock U.S. Patent No. 6,053,909.

Shaddock discloses a system (see Fig. 6) and method for treating skin of a patient, the system comprising:

a) a surface electrode assembly comprising at least a first pair of a first electrode **40A** and a second electrode **40B**, the first and second electrodes being configured to be applied to the surface of the skin and to apply a voltage to the skin surface (see Fig. 8A and Col. 8, lines 28-36);

b) an electrical meter [comprising a sensor array **50** (see Fig 7), impedance-measuring feedback (see Fig. 7 and Col. 13, lines 4-12), temperature measuring-feedback (see Col. 12, line 59 to Col. 13, line 3), and current and voltage-measuring

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feedback (see Fig. 7, and Col. 13, lines 18-22)], the meter configured to measure an electrical response of the skin to a voltage applied across the electrodes.

c) a processor (control system 26) configured to adjust value of a parameter of the radiation based upon a measured electrical response to a voltage applied across the first and second electrodes, and wherein the electrical response of the skin is skin impedance or skin conductivity (see Col. 10, lines 22-29 and Col. 5, lines 24-34).

In reference to claims 1 and 11 of the present application, the first two elements (i.e., surface radiation assembly configured to irradiate a region on the skin surface with EM radiation; and surface electrode assembly to apply the skin with diagnostic voltage) are written as if they are directed to two separate elements of the invention. However, Fig. 2; page 4, lines 12-18; and claims 7 and 18 of the applicant's disclosure teach that the surface electrode assembly is used to provide the treatment EM radiation as well as the diagnostic voltage.

In one embodiment, Shadduck further teaches that the surface electrode assembly is used to provide for both the diagnostic and treatment energies (see Col. 12, lines 19-23). Hence, Shadduck meets the limitations of the instant claims as recited.

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As to claim 2 the value of the parameters is adjusted in order to control the skin temperature (Col. 12, line 59 to Col. 13, line 3).

As to claims 7 and 18, the first and second electrodes (40A and 40B, respectively) are the source of radiation.

As to claims 3, 4, 6, 14, 15, and 17, the electromagnetic radiation applied to the skin is in the radio frequency.

As to claims 5 and 16, the adjusted parameter is selected from the group comprising the irradiation intensity, irradiation frequency, and irradiation duration as presently claimed (see Col. 9, line 57 to Col. 10, line 19).

Allowable Subject Matter

Claim 10 is allowed.

Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M

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Farah whose telephone number is (703) 305-5787. The examiner can normally be reached on Mon-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah

02/21/2004.

